HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 707 Home Kitchen Operations
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Thompson	Anstead

SUMMARY ANALYSIS

Currently, Florida does not allow people to sell home cooked meals, similar to meals served in a restaurant, from their private residence to the public. Florida only allows people to sell certain cottage foods prepared at a private residence to the public if ingredients are used that are not perishable. Home kitchen operations, where a person prepares, serves and sells meals made in their residence to the public, have historically been prohibited because such food or meals are considered "Potentially Hazardous Food/Time/Temperature Control for Safety" (PHF/TCS) foods, that require time/temperature control to limit pathogenic microorganism growth or toxin formation. A few states have enacted home kitchen operation laws that allow home cooked meals to be sold to the public, but that limit the number of meals that can be served, the types of ingredients allowed to be used, the amount of revenue that can be earned, and how certain foods can be prepared.

The bill:

- Allows "home kitchen operations" in a private residence under certain conditions.
- Provides an exception for "home kitchen operations" from food permitting requirements.
- Allows home kitchen operators to store, handle, prepare, and package food that does not include raw milk, raw milk products, raw oysters, or raw shellfish.
- Limits home kitchen operations annual gross sales to $250,000.
- Limits food preparation and service to 10 individual meals per day.
- Requires food to be prepared, cooked, and served on the same calendar day.
- Authorizes sales via the Internet or in person, and delivery in person directly to the consumer, to a specific event venue, or to the consumer by the home kitchen operation or a third party delivery service.
- Prohibits sales and deliveries of home kitchen products at wholesale or retail.
- Specifies labeling requirements.
- Preempts the regulation of home kitchen operations to the State.
- Requires DACS to investigate complaints and makes refusal to permit entry and inspection grounds for disciplinary action.
- Authorizes immediate closures by DACS if it determines that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Authorizes DACS to impose a Class II administrative fine not to exceed $5,000.

The bill may have in indeterminate fiscal impact on state and local government and positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Food Safety Regulation

In Florida, three agencies share responsibilities for ensuring that safe, and wholesome food is provided to the public. Those agencies include the Department of Agriculture and Consumer Services (DACS), the Department of Business and Professional Regulations (DBPR) and the Department of Health (DOH):[1]

- DACS permits and inspects grocery stores, food processing plants, food storage, and distribution points.
- DBPR licenses and inspects restaurants, mobile food vehicles, and caterers.
- DOH oversees food service establishments located in institutional settings (such as schools, assisted living facilities, detention facilities, adult day cares), civic and fraternal organizations, bars and lounges that don't prepare foods, and theaters that limit their food service to items customarily served at theaters (such as beverages, pop corn, hot dogs and nachos).[2]

DACS

The Division of Food Safety within DACS is responsible for the administration and enforcement of the Florida Food Safety Act.[3] The act is intended to:

- Safeguard the public health and promote the public welfare by protecting the consuming public from injury from intrastate commerce in food.
- Provide legislation conforming with the Federal Food, Drug, and Cosmetic Act, the Agriculture Marketing Act of 1946, and Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and
- Promote uniformity of state and federal laws and their administration and enforcement throughout the United States and in the states.[4]

To open a food establishment in Florida, an applicant must obtain a food establishment permit from DACS. DACS issues three different types of food establishment permits, including retail, wholesale/manufactured, and medical marijuana treatment center edibles.[5]

DACS regulated establishments include supermarkets and grocery stores, convenience stores, coffee shops, bakeries, retail meat markets, seafood markets, juice and smoothie bars, bottled water plants, ice and water vending machines, all food processing plants, food warehouses, food salvage stores, and certain mobile food units selling only prepackaged foods or non-potentially hazardous food items.[6]

Food establishments are **inspected** and food products are sampled routinely for consumer safety.[7] DACS also conducts United States Department of Agriculture (USDA) Country of Origin Labeling (COOL) audits and Food and Drug Administration (FDA) contract inspections for manufactured food establishments.

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[1] Florida Department of Health, *Hygiene Codes and Standards*, https://www.floridahealth.gov/environmental-health/food-safety-and-sanitation/food-manager-code-standards.html (last visited Jan. 29, 2022).
[2] *Id*.
[3] See ch. 500, F.S.
[4] S. 500.02, F.S.
[5] Florida Department of Agriculture and Consumer Services, *Food Establishments*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments (last visited Jan. 29, 2022).
[6] S. 500.03(1)(p)(q)and(r), F.S.
[7] S. 500.147, F.S.

DACS is authorized to impose suspensions and administrative fines against any retail food store, food establishment, or cottage food operation that that are in violation of the act.[8]

DACS is required to post a prominent closed-for-operation sign on any food establishment that has had its permit suspended or revoked, and a sign on any establishment judicially or administratively determined to be operating without a permit.

DACS is authorized to determine that a food establishment regulated under the Food Safety Act requires immediate closure when the food establishment fails to comply with the Food Safety Act and presents an imminent threat to the public health, safety, and welfare. Upon such a determination, DACS is authorized to issue an immediate final order to close a food establishment as follows:

- The Division director or designee must determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Upon such determination, DACS must issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment.
    - DACS is required to serve the order upon the owner, operator, or agent thereof of the food establishment.
    - DACS is authorized to attach a closed-for-operation sign to the food establishment while the order remains in place.
- DACS is required to inspect the food establishment within 24 hours after the issuance of the order. Upon a determination that the food establishment has met the applicable requirements to resume operations, DACS must serve a release upon the owner, operator, or agent thereof of the food establishment.
- A food establishment ordered by DACS to cease operation and close must remain closed until released by DACS or by a judicial order to reopen.
- It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., for a person to deface or remove a closed-for-operation sign placed on a food establishment by DACS or for the owner or operator of a food establishment to resist closure of the establishment by DACS, and DACS may impose administrative sanctions for violations of this provision.

Cottage Food Products

DACS regulates cottage food operators who are allowed to prepare and sell certain foods at home. This authority is limited to foods that **do not easily spoil or are considered shelf-stable foods**. These foods do not require time and temperature controls. "Cottage food products" are defined as food that is not potentially hazardous and which are sold in accordance with cottage food operating requirements.[9] Like many other states, DACS adopts the U.S. Food & Drug Administration (FDA) food code.[10] The food code/DACS rule defines "Potentially Hazardous Food/Time/Temperature Control for Safety Food" (PHF/TCS) as food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.[11]

DACS has published guidance defining foods that are, and those that are not, considered cottage food products. These examples include the following:[12]

Permitted Cottage Foods:

- Loaf breads, rolls, and biscuits;
- Cakes, pastries, and cookies;

[8] S. 500.121, F.S.
[9] S. 500.03(1)(k), F.S.
[10] U.S. Food & Drug Administration, *2017 Food Code*, https://www.fda.gov/media/110822/download (last visited Feb. 21, 2021).
[11] R. 5K-4.0010(9), F.A.C.
[12] DACS Division of Food Safety, *Cottage Food Operations*, https://www.fdacs.gov/Business-Services/Food/Food-Establishments/Cottage-Foods (last visited Feb. 19, 2021). The United States Food and Drug Administration (FDA) model food code includes a definition for such foods; DACS formed a definition that is similar. FDA Food Code §1-201.10 (2017).

- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn and popcorn balls.

Prohibited Cottage Foods:

- Fresh or dried meat or meat products including jerky;
- Canned fruits and vegetables, chutneys, vegetable butters and jellies, flavored oils, hummus, garlic dip, salsas, etc.;
- Fish or shellfish products;
- Canned pickled products such as corn relish, pickles, and sauerkraut;
- Raw seed sprouts;
- Bakery goods which require any type of refrigeration, such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or fillings;
- Milk and dairy products including hard, soft, and cottage cheeses and yogurt;
- Cut fresh fruits and/or vegetables;
- Juices made from fresh fruits or vegetables;
- Ice and/or ice products;
- Barbeque sauces, ketchups, and/or mustards; and
- Focaccia-style breads with vegetables and/or cheeses.

Cottage Food Operating Requirements

In Florida, a "cottage food operation" is defined as a natural person or an entity that produces or packages cottage food products at the residence of the natural person or at the residence of a natural person who has an ownership interest in the entity and sells such products in accordance with the cottage food operating requirements.[13]

Cottage food operators are exempt from food and building permitting requirements.[14]

A cottage food operation must comply with the following requirements in order to operate:[15]

- Sales Limit: Annual gross sales of cottage foods may not exceed $250,000;[16]
- Internet Sales: A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order.
- Delivery: Such products may be delivered in person directly to the consumer, to a specific event venue, or by United States Postal Service or commercial mail delivery service.
- Wholesale Sales: A cottage food operation may not sell, offer for sale, or deliver cottage food products at wholesale..
- Labeling: Cottage foods must be sold prepackaged with a label affixed containing the following information:
    - Name and address of the cottage food operation;
    - Name of the cottage food;
    - Ingredients of the cottage food, in descending order of predominance by weight;
    - Net weight or net volume of the cottage food;

[13] S. 500.03(1)(j), F.S.
[14] *See* s. 500.12, F.S.
[15] S. 500.80(1)-(6), F.S.
[16] S. 500.80(1)(b), F.S. This includes all sales of products from any location, regardless of the types of products sold or number of persons involved in any operation. Documentation of sales must be available to DACS for verification.

    - Allergen information as specified by federal labeling requirements;
    - If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and
    - A statement printed in at least 10-point font and in a color that provides clear contrast to the background of the label which reads "Made in a cottage food operation that is not subject to Florida's food safety regulations;"[17]
- Storage: Only cottage foods that are stored on the premises of the cottage food operation may be sold;
- State and Federal: A cottage food operation must comply with applicable state or federal tax laws, rules, regulations, or certificates;
- Local Government: The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, or sale of cottage food products by a cottage food operation; however, a cottage food operation must comply with the conditions for the operation of a home-based business.

DACS may enter and inspect the premises of a cottage food operation to determine compliance with the cottage food operations requirements only upon receipt of a complaint, which alleges that a cottage food operation has violated any of the cottage food operating requirements. If a cottage food operation refuses to permit DACS to enter the premises or to conduct the inspection, he or she is subject to disciplinary action.[18]

DBPR

The Division of Hotels and Restaurants within DBPR is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare of Florida citizens.[19]

The Division licenses and inspects **public food service establishments defined to mean any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises, called for or taken out by customers, or prepared prior to being delivered to another location for consumption**.[20]

Each person who plans to open a public food service establishment is required to apply for and receive a license from the Division prior to the commencement of operation. Applicants are required to complete the following:[21]

- **Food service plan review**. This requirement is applicable to new restaurants, remodeled restaurants, re-opened restaurants that have been closed for at least one year and restaurants that have been converted from another use. The plan must be submitted to the Division for approval.
- **Application forms**. Applicants must complete the appropriate application forms. If the restaurant will be serving alcohol, applicants will need to apply for a liquor license.
- **License fees**. Applicants must pay a license fee based on the type of food service operation and the number of seats.

The Division has the **right of entry and access** to public food service establishments at any reasonable time.[22]

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[17] Cottage food products must be labeled in accordance with the requirements as outlined in s. 500.80(3), F.S., and U.S. Code of Federal Regulations Title 21, Part 101.
[18] S. 500.08(7)(a)-(b), F.S.
[19] Ch. 509, F.S.
[20] S. 509.013(5)(a), F.S.; The term also includes a culinary education program, as defined in s. 381.0072(2), F.S., which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.
[21] *See* ch. 509, F.S.

The Division is required to adopt and enforce **sanitation rules** to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation regulations, cooperating and coordinating with DOH in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the Division.[23]

The Division must **report annually** to the Governor and Legislature the total number of active public lodging and public food service licenses in the state, the total number of inspections conducted by the Division, the number of violations of each sanitary standard, and any recommendations for improved inspection procedures. The Division must also keep an accurate account of all expenses arising out of the performance of its duties and all fees collected.[24]

The regulation of public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is **preempted to the state**. This does not preempt the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.[25]

According to DBPR, **employee health** is one of the most important measures for the prevention of foodborne illness. People who work in food service establishments are required to report certain foodborne illnesses, symptoms of foodborne illness, and exposure to foodborne illness to their employer. Depending upon the illness and/or symptom, the manager may be required to exclude (not allow to work in the food establishment in any capacity) or restrict (limit duties) the employee. In addition, the manager may be required to notify the Department of Health.[26]

The "Big 5" **foodborne illnesses** identified by DBPR that food service employees and managers should be aware of are Salmonella Typhi, Shigella, Shiga-toxin producing E. coli, Hepatitis A, and Norovirus. Food service workers who experience vomiting or diarrhea caused by an infectious condition cannot work while they are ill and may not return to work until they have not had any symptoms for at least 24 hours.[27]

The Division is required, upon proper finding, to immediately issue an order to close a licensed public food service establishments in the instance of a severe and immediate public health or safety or welfare threat.[28]

At least one **certified manager** is required for every public food service establishment. A certified food manager must be present when four or more people are engaged in food activities (storing, handling, preparing or serving food). Each manager has 30 days from date of hire to become properly certified and must recertify every three years.[29]

The law requires **training** on foodborne disease prevention and professional hygienic practices for all food service employees who are responsible for the storage, preparation, display or service of food. The training must include personal cleanliness (e.g., handwashing), types and causes of foodborne illness, identification of time/temperature control for safety foods, techniques to prevent cross

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[22] S. 509.032(2)(b), F.S.
[23] S. 509.032(2)(d), F.S.
[24] S. 509.032(5), F.S.
[25] S. 509.032(7), F.S.
[26] Division of Hotels and Restaurants, Safe Restaurant Operations, http://www.myfloridalicense.com/dbpr/HR/forms/documents/SafeRestaurantOperations.pdf (last visited Ja. 29, 2022).
[27] *Id*.
[28] S. 509.035, F.S.
[29] S. 509.039, F.S.

contamination, and how to control or eliminate harmful bacteria. Employees must receive training within 60 days of hire and be retrained every three years.[30]

Any establishment that offers **raw or undercooked animal foods** must provide a **consumer advisory**. The advisory may be in the form of brochures, menu advisories, table tents, placards or other effective written means. Common foods offered raw or undercooked which require a consumer advisory include hamburgers, steak, sashimi and eggs. Typical advisory language is a statement such as "Consuming raw or undercooked meats, poultry, seafood or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."[31] When raw or undercooked animal foods are used as ingredients in other foods (e.g., sushi, raw eggs in Caesar salad or homemade meringue) it must also be made clear to the consumer that the menu items contain raw or undercooked animal foods.[32] Any establishment that offers raw or undercooked oysters must provide a consumer advisory. This advisory may also be in the form of brochures, menu advisories, table tents, placards or other effective written means.[33]

DOH

DOH is responsible for licensure and regulation of food service establishments that include institutions, schools, civic or fraternal organizations, bars and lounges, and theaters that serve traditional theater foods (such as soft drinks, popcorn, hot dogs, etc.), and locations that participate in the USDA Afterschool Meal Program. The Department of Health also addresses temporary food events, mobile food units, and vending machines that operate at or through any of these facilities. County Health Departments inspect and issue food certificates to these facilities. Unless exempted, these food operations need to comply with food manager certification requirements.[34]

DOH is authorized to advise and consult with the Agency for Health Care Administration (AHCA), DBPR, DACS, and the Department of Children and Families (DCF) concerning procedures related to the storage, preparation, serving, or display of food at any building, structure, or facility not expressly included in this section that is inspected, licensed, or regulated by those agencies.[35]

DOH is required to inspect and regulate food service establishments as under its jurisdiction, for the purpose of safeguarding the public's health, safety, and welfare. The department is required to inspect each food service establishment as often as necessary to ensure compliance with applicable laws and rules and has the right of entry and access to these food service establishments at any reasonable time.[36]

DOH is authorized to investigate complaints and reports involving health care practitioners regulated by DOH. Enforcement actions which may be taken against health care practitioners are administrative in nature, including, but not limited to reprimands, fines, restrictions of practice, remedial education, administrative costs, probation, license suspensions or license revocations.[37]

Recent Trends

Home Kitchen Laws

[30] S. 509.049, F.S.
[31] Ch. 3-603.11, U.S. Food & Drug Administration, 2017 Food Code.
[32] *Id*.
[33] R. 61C-4.010(8), F.A.C.
[34] Florida Department of Health, *Hygiene Codes and Standards*, https://www.floridahealth.gov/environmental-health/food-safety-and-sanitation/food-manager-code-standards.html (last visited Jan. 29, 2022).
[35] S. 381.0072(3)(a), F.S.
[36] S. 381.0072(3)(c)and(d), F.S.
[37] S. 381.0072(6)and(7), F.S.

Cottage foods laws have expanded rapidly in the past five years. Since 2015, 25 states and Washington, D.C. have either created new cottage food programs or significantly expanded their existing laws.[38]

Recently, a few states have enacted laws authorizing "microenterprise home kitchen" operations, which legalize the sale of home cooked meals that contain **meat**. Although these laws let home chefs sell an even broader array of dishes than under food freedom laws or cottage food laws, most **require inspections and permits**.[39]

A microenterprise home kitchen operation is a food facility that is operated by a resident from their private home kitchen. Once permitted, a resident can store, handle, prepare, and serve food to the public, as allowed by State law, similar to a restaurant. State law does place limits on the number of meals that can be served, revenue that can be earned, and on how certain foods can be prepared, among other requirements.[40] Approximately six states allow some form of microenterprise home kitchen operation. These states include California, Montana, Utah, Wyoming, Oklahoma and North Dakota.

California[41] gives a **city or county "full discretion"** to authorize microenterprise home kitchens in their jurisdiction. Under the regulations, until a county or a city authorizes these types of operations, a microenterprise home kitchen will not be able to be issued a health permit to operate.[42] As of September 2021, permits are available in seven local jurisdictions.[43]

Utah[44] requires a **permit and annual inspection** from the local health department. Participants must inform consumers that regulations for home kitchens are different than for commercial restaurants. The law allows residents to sell home-cooked meals containing meat. Customers may pick up their orders in person, but they may not consume the food on site. In-person deliveries are also permitted.

Montana allows people to sell **almost all kinds of foods and meals**, with the exception of certain meats, directly to consumers.[45]

Effect of the Bill

The bill allows home kitchen operations in a private residence operated by the resident under certain conditions, and provides an exception for "home kitchen operations" from food permitting requirements in ch. 500, F.S., the Florida Food Safety Act.

The bill defines a "home kitchen operation" as a natural person or an entity that stores, handles, prepares home kitchen products at the residence of the natural person or at the residence of a natural person who has an ownership interest in the entity and sells such products in accordance with s. 500.82, F.S.

The bill specifies that a home kitchen operation is not:

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[38] Institute for Justice, Recent State Reforms for Homemade Food Businesses, https://ij.org/legislative-advocacy/state-reforms-for-cottage-food-and-food-freedom-laws/ (last visited Jan. 29, 2022).
[39] *Id*.
[40] San Mateo County Health, MICROENTERPRISE HOME KITCHEN OPERATIONS (MEHKO), https://www.smchealth.org/node/4020 (last visited Jan. 29, 2022).
[41] Cal. Retail Food Code s. 113825 (2019).
[42] California Department of Public Health, Food and Drug Branch, Microenterprise Home Kitchen Operations (MEHKO), https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/MicroenterpriseHomeKitchenOperations.aspx?TSPD_101_R0=087ed344cfab20008aef9ae56ec32a41e3f2177082ed491bab83bb9a4bf591621469e2a3c6764f4e088646e6f6143000cae5963a2cdac4e8f70bbe66f000b7d9bc633c74b7350dedde334b0f787f0a894f2aa8acb6560497b9ae68db9301e778 (last visited Jan. 29, 2022).
[43] Institute for Justice, Recent State Reforms for Homemade Food Businesses, https://ij.org/legislative-advocacy/state-reforms-for-cottage-food-and-food-freedom-laws/ (last visited Jan. 29, 2022).
[44] Utah Code Ann. S. 631-1-226 (2021).
[45] The Washington Post, *Selling home-cooked food is getting easier, thanks to pandemic-fueled deregulation*, https://www.washingtonpost.com/food/2021/10/13/cottage-food-sales-legal/ (last visited Feb. 1, 2022).

- A public food service establishment as defined in s. 509.013, F.S.
- A catering operation licensed under ch. 509, F.S.
- A cottage food operation, as defined in s. 500.03, F.S.

The bill defines "home kitchen product" as food that is:
- Stored, handled, prepared, and packaged by a home kitchen operation.
- **Not raw milk, raw milk products, raw oysters, or raw shellfish.**

The bill requires home kitchen operations to comply with the applicable requirements of the Florida Food Safety Act; however, the bill provides that home kitchen operations are **exempt from the permitting requirements** of s. 500.12, F.S., of the Florida Food Safety Act, if the home kitchen operation is in compliance with the home kitchen operation requirements, and:
- Has annual gross sales of home kitchen products that **do not exceed $250,000**.
- Food preparation and service is limited to no more than **10 individual meals per day**, or the approximate equivalent of meal components when sold separately.
- Food is prepared, cooked, and **served on the same calendar day**.
- Processes home kitchen food products in compliance with state and federal regulations and s. 500.80, F.S., relating to cottage food operations.

The bill requires home kitchen **annual gross sales** to include all sales of home kitchen products at any location, regardless of the types of products sold or the number of persons involved in the operation. A home kitchen operation must provide DACS, upon request, with **written documentation** to verify the operation's annual gross sales, and **DACS is granted access** to such records within 24 hours of the request.

The bill authorizes home kitchen operations to sell, offer for sale, and accept payment for home kitchen products over the Internet or in person. Such products may be delivered in person directly to the consumer, to a specific event venue, or to the consumer by the home kitchen operation or a third party delivery service.

The bill prohibits home kitchen operations from not selling, offering for sale, or delivering home kitchen products to any wholesaler or retailer.

The bill requires all home kitchen operation owners and employees to successfully **complete a food safety certificate training program** that complies with U.S. FDSA Food Safety Modernization Act. The course, at a minimum, must include information and training on cross-contamination, temperature control, and personal hygiene.

The bill requires home kitchen operations to:
- Take steps to **avoid any potential contamination** to:
    - Food.
    - Equipment.
    - Utensils.
    - Unwrapped single-service and single-use articles.
- Prevent an individual from entering the food preparation area while food is being prepared if the individual is known to be suffering from:
    - Symptoms associated with acute gastrointestinal illness; or
    - A communicable disease that is transmissible through food.
- Ensure a hand washing station supplied with warm water, soap, and disposable hand towels is conveniently located in food preparation, food dispensing, and warewashing areas.
- Ensure that the kitchen sink is fully operational and has hot and cold water and a sanitizing agent, and that dishes are sanitized between each use.
- Ensure that ready-to-eat home kitchen food products are protected from contamination during storage, preparation, handling, transport, and display.
- Ensure that home kitchen food products are maintained at proper holding temperatures.
    - Ensure that utensils and equipment used in the home kitchen operation:

    - Retain their characteristic qualities under normal use conditions.
    - Are properly sanitized after each use.
    - Are maintained in a sanitary manner between uses.
- Ensure that kitchen equipment is cleaned and sanitized between uses.
- Ensure that gases, odors, steam, heat, grease, vapors, and smoke are able to escape the kitchen.
- Ensure that temperature measuring devices or holding equipment for the time or temperature control of food is properly used for hot and cold holding of home kitchen food products during storage, serving, and cooling.
- Ensure that home kitchen food product preparation and service is discontinued if there is a disruption of potable water service.

The bill specifies that home kitchen operations may only sell home kitchen products which are affixed with a label that contains the following information:

- The name and address of the home kitchen operation.
- The name of the home kitchen product.
- The ingredients of the home kitchen product, in descending order of predominance by weight.
- The net weight or net volume of the home kitchen product.
- Allergen information as specified by federal labeling requirements.
- If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements.
- The following statement printed in at least 10-point type in a color that provides a clear contrast to the background of the label: "**Made in a home kitchen operation that is not subject to Florida's food safety regulations**."

The bill clarifies that it does not:

- Exempt a home kitchen operation from any state or federal tax law, rule, regulation, or certificate that applies to all home kitchen operations.
- Prevent DACS or a local health department from enforcing an order to cease and desist operation of a home kitchen if the department or the local health department has a valid reason to suspect that the home kitchen operation is the source of an adulterated food or of an outbreak of illness caused by contaminated food.
- Apply to a person operating under a food permit issued pursuant to s. 500.12, F.S.

The bill **preempts the regulation** of home kitchen operations to the state. A local law, ordinance, or regulation may not prohibit a home kitchen operation or regulate the preparation, processing, storage, or sale of home kitchen products by a home kitchen operation; however, a home kitchen operation must comply with the conditions for the operation of a home-based business under s. 559.955, F.S.

The bill requires DACS to **investigate any complaint** which alleges that a home kitchen operation has violated an applicable provision or rule.

The bill provides that upon receipt of a complaint, a DACS authorized officer or employee is required to enter and **inspect the premises** of a home kitchen operation to determine compliance with the Florida Food Safety Act and DACS rules, as applicable. A home kitchen operation's refusal to permit such entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to s. 500.121, F.S., under the Florida Food Safety Act.

The bill provides that a home kitchen operation is subject to s. 500.121(7), F.S., which authorizes immediate closure by DACS if the operation fails to comply with the Florida Food Safety Act and presents an **imminent threat to the public health, safety, and welfare**. DACS is:

- Authorized to accept inspection results from other state and local building officials and other regulatory agencies as justification for such action.
- Required, upon such a determination, to issue an immediate final order to close a food establishment as follows:

- If the Division director or designee determines that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Upon such determination, is required to issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment. DACS must serve the order upon the owner, operator, or agent thereof of the food establishment, and may attach a closed-for-operation sign to the food establishment while the order remains in place.
- DACS is required to inspect the food establishment within 24 hours after the issuance of the order. Upon a determination that the food establishment has met the applicable requirements to resume operations, DASCS is required to serve a release upon the owner, operator, or agent thereof of the food establishment.
- A food establishment ordered by DACS to cease operation and close must remain closed until released by DACS or by a judicial order to reopen.
- It is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., for a person to deface or remove a closed-for-operation sign placed on a food establishment by DACS or for the owner or operator of a food establishment to resist closure of the establishment by DACS.
- DACS may impose administrative sanctions for violations.

The bill authorizes DACS to impose a Class II **administrative fine** pursuant to s. 570.971, F.S., against a home kitchen operation, that violates the Florida Food Safety Act. For each violation in the Class II category, a fine not to exceed $5,000 may be imposed.

B. SECTION DIRECTORY:

Section 1: Amends s. 500.03, F.S., relating to definitions.

Section 2: Creates s. 500.82, F.S., relating to home kitchen operations.

Section 3: Amends s. 500.121, F.S., relating to disciplinary procedures.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Depending on the number of complaints received, DACS could see an increase in the issuance of fines.

2. Expenditures:

   Indeterminate. Depending on the number of complaints received, DACS could have more cases to investigate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow for the expansion and growth of small businesses in Florida and will allow more people to work from home in their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES